

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Casey McCann	Team: Squad #11	CCRB Case #: 201810824	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 12/20/2018 3:09 AM	Location of Incident: East 125th Street and 5th Avenue; 25th Precinct stationhouse	Precinct: 25	18 Mo. SOL 6/20/2020	EO SOL 2/4/2021	
Date/Time CV Reported Sat, 12/22/2018 6:01 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 12/31/2018 10:39 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Edwin Lau	06902	950730	025 PCT
2. POM Maxwell Bindman	02335	959492	025 PCT
3. POM Fausto Gomez	13157	941930	025 PCT
4. POM Norman Brissett	17999	960280	025 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Frank Henenlotter	10006	961809	025 PCT
2. SGT Monzur Alahi	01021	948297	025 PCT
3. POF Kelly Habekost	06667	954906	025 PCT
4. SGT Norman Cox	02339	945622	025 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Edwin Lau	Force: At East 125th Street and 5th Avenue in Manhattan, Police Officer Edwin Lau used physical force against § 87(2)(b) [REDACTED]	
B.POM Maxwell Bindman	Force: At East 125th Street and 5th Avenue in Manhattan, Police Officer Maxwell Bindman used physical force against § 87(2)(b) [REDACTED]	
C.POM Fausto Gomez	Force: At East 125th Street and 5th Avenue in Manhattan, Police Officer Fausto Gomez used physical force against § 87(2)(b) [REDACTED]	
D.POM Norman Brissett	Force: At East 125th Street and 5th Avenue in Manhattan, Police Officer Norman Brissett used physical force against § 87(2)(b) [REDACTED]	
E.POM Edwin Lau	Force: Outside of the 25th Precinct stationhouse in Manhattan, Police Officer Edwin Lau used physical force against § 87(2)(b) [REDACTED]	
F.POM Maxwell Bindman	Force: Outside the 25th Precinct stationhouse in Manhattan, Police Officer Maxwell Bindman used physical force against § 87(2)(b) [REDACTED]	
G.POM Edwin Lau	Force: Inside the 25th Precinct stationhouse in Manhattan, Police Officer Edwin Lau used physical force against § 87(2)(b) [REDACTED]	
H.POM Maxwell Bindman	Force: Inside the 25th Precinct stationhouse in Manhattan, Police Officer Maxwell Bindman used physical force against § 87(2)(b) [REDACTED]	

Officer(s)	Allegation	Investigator Recommendation
I.POM Maxwell Bindman	Force: Inside the 25th Precinct stationhouse in Manhattan, Police Officer Maxwell Bindman used physical force against § 87(2)(b)	

### Case Summary

On December 22, 2018, § 87(2)(b) filed this complaint with IAB via telephone. The complaint was received at the CCRB on December 31, 2018.

On December 20, 2018, at approximately 3:09 a.m., at the corner of East 125<sup>th</sup> Street and 5<sup>th</sup> Avenue in Manhattan, Police Officer Edwin Lau, Police Officer Maxwell Bindman, Police Officer Fausto Gomez, and Police Officer Norman Brissett, all of the 25<sup>th</sup> Precinct, used physical force against § 87(2)(b) (**Allegations A – D: Force, § 87(2)(g)**). Outside of the 25<sup>th</sup> Precinct stationhouse in Manhattan, PO Lau and PO Bindman pulled § 87(2)(b) out of the police vehicle (**Allegations E and F: Force, § 87(2)(g)**). Inside of the 25<sup>th</sup> Precinct stationhouse, PO Lau and PO Bindman dragged § 87(2)(b) who was rear handcuffed and leg shackled, into the holding cell area (**Allegation G and H: Force, § 87(2)(g)**). PO Bindman pushed § 87(2)(b) inside a holding cell, and approximately one minute and 20 seconds later, moved § 87(2)(b) to a second cell and pushed § 87(2)(b) inside the second cell (**Allegation I: Force, § 87(2)(g)**).

§ 87(2)(b) was arrested for § 87(2)(b)

Video footage was obtained and will be discussed in further detail below.

### Findings and Recommendations

**Allegation (A) Force: At East 125<sup>th</sup> Street and 5<sup>th</sup> Avenue in Manhattan, Police Officer Edwin Lau used physical force against § 87(2)(b)**

**Allegation (B) Force: At East 125<sup>th</sup> Street and 5<sup>th</sup> Avenue in Manhattan, Police Officer Maxwell Bindman used physical force against § 87(2)(b)**

**Allegation (C) Force: At East 125<sup>th</sup> Street and 5<sup>th</sup> Avenue in Manhattan, Police Officer Fausto Gomez used physical force against § 87(2)(b)**

**Allegation (D) Force: At East 125<sup>th</sup> Street and 5<sup>th</sup> Avenue in Manhattan, Police Officer Norman Brissett used physical force against § 87(2)(b)**

An attorney was consulted in this case. The following facts are undisputed:

On December 20, 2018, at approximately 3:09 a.m., PO Lau, PO Bindman, PO Gomez, PO Brissett, Police Officer Kelly Habekost, Police Officer Frank Henenlotter, and Sergeant Monzur Alahi, all of the 25<sup>th</sup> Precinct, responded to a radio run of a vehicle larceny in progress at 2007 5<sup>th</sup> Avenue, located between East 124<sup>th</sup> Street and East 125<sup>th</sup> Street in Manhattan. The 911 caller provided a description of the subject: a black male with a beard, wearing a gray jacket, tan pants, black knit cap, and light gray backpack. PO Lau and PO Bindman were the first to arrive on scene. Upon approaching § 87(2)(b) who matched the physical and clothing description provided in the call, the officers asked § 87(2)(b) to stop. § 87(2)(b) continued to walk. PO Lau, PO Bindman, PO Gomez, and PO Brissett grabbed § 87(2)(b), took him to the ground, and handcuffed him. An ambulance was then called to the location and § 87(2)(b) was removed to § 87(2)(b) as an emotionally disturbed person (EDP). Upon returning to the 25<sup>th</sup> Precinct stationhouse, PO Bindman and PO Lau dragged § 87(2)(b) who was rear handcuffed and leg shackled, into the cell area by the chain between his leg shackles and his left arm. PO Bindman then pushed § 87(2)(b) into a holding cell. Approximately one minute and 20 seconds later, PO Bindman, PO Gomez, and PO Henenlotter moved § 87(2)(b) to a neighboring cell. PO Bindman pushed § 87(2)(b) into the cell a second time. § 87(2)(b) was still rear handcuffed and leg shackled when PO Bindman pushed him.

According to § 87(2)(b) (BR 04), at approximately 2:30 a.m., he was walking from his friend's house back home. § 87(2)(b) had smoked marijuana at approximately 10 p.m. and drank a bottle of wine approximately 30 minutes before he left his friend's house and thus was intoxicated. § 87(2)(b) did not remember what he was wearing, but had a black backpack on his person, which contained a quantity of synthetic marijuana. § 87(2)(b) denied using synthetic marijuana before walking home.

As § 87(2)(b) approached the corner of East 125<sup>th</sup> Street and 5<sup>th</sup> Avenue, he saw a marked police vehicle traveling southbound on 5<sup>th</sup> Avenue. The officers exited the vehicle and told § 87(2)(b) to stop, but § 87(2)(b) ignored them. PO Lau approached § 87(2)(b) and patted his check, pants pockets, and waistband area, and told § 87(2)(b) that they received a complaint about § 87(2)(b) damaging property and they wanted "to investigate." § 87(2)(b) denied damaging any property.

PO Lau and PO Bindman grabbed § 87(2)(b) arms. § 87(2)(b) jerked one of his shoulders back, but did not do anything else with his body. § 87(2)(b) fell to the ground and landed on his right shoulder, but he did not remember exactly how this occurred. § 87(2)(b) sat on the ground rear handcuffed and leg shackled. § 87(2)(b) did not remember how he was leg shackled.

PO Lau (BR 05) testified that he saw § 87(2)(b) who matched the description of the male provided in the 911 call, on the east corner of 125<sup>th</sup> Street and 5<sup>th</sup> Avenue. PO Lau did not remember the description provided in the call at the time of his interview. PO Lau told § 87(2)(b) to stop from inside his vehicle, but § 87(2)(b) continued to walk west on 125<sup>th</sup> Street. PO Lau and PO Bindman exited their vehicle. PO Gomez and PO Brissett were on scene at this time. PO Lau grabbed one of § 87(2)(b) arms, but § 87(2)(b) moved his body to try and get away. The other officers also grabbed § 87(2)(b) and tried to get § 87(2)(b) arms behind his back, but were unsuccessful in doing so, as § 87(2)(b) continued to move his body. As a result of the officers' and § 87(2)(b) movement, § 87(2)(b) fell on top of PO Lau. The officers handcuffed § 87(2)(b). A few minutes later, the 911 caller, who PO Lau did not identify at the time of his interview, came out of § 87(2)(b) and told PO Lau that § 87(2)(b) was the individual trying to break into the car. § 87(2)(b) was under arrest at this time.

PO Bindman (BR 06) provided consistent testimony to that of PO Lau. When § 87(2)(b) ignored the officers' commands to stop, PO Bindman grabbed § 87(2)(b) arm and PO Lau grabbed the other arm. § 87(2)(b) said, "Get off me," "Fuck you," and, "Get away from me," while stiffening his body and moving his shoulders to try and break free from PO Bindman's grip. The motion of the officers and § 87(2)(b) caused § 87(2)(b) to fall forward and PO Lau to fall backward.

PO Henenlotter (BR 07) said that as he arrived on scene, officers were trying to stop § 87(2)(b) but PO Henenlotter did not know why the officers wanted § 87(2)(b) to stop. When PO Henenlotter exited his vehicle, the officers placed § 87(2)(b) into handcuffs. PO Henenlotter did not remember the officers using a forcible takedown or any other force to place § 87(2)(b) into handcuffs.

Sgt. Alahi (BR 08) testified that at the time he arrived on scene, § 87(2)(b) was already in handcuffs. Sgt. Alahi did not recall seeing any injuries on § 87(2)(b).

All of the officers testified that they believed § 87(2)(b) to be under the influence of either alcohol or a narcotic; however only PO Bindman said that § 87(2)(b) had physical manifestations of intoxication or drug use, as § 87(2)(b) had slurred speech, blood-shot and

water eyes, and made irate statements. PO Bindman, PO Henenlotter, and Sgt. Alahi testified that § 87(2)(b) constantly screamed during the incident, which made them deem § 87(2)(b) an EDP. PO Lau and PO Bindman escorted EMS and § 87(2)(b) to § 87(2)(b)

PO Lau, PO Bindman, PO Gomez, and PO Brissett's Threat, Resistance or Injury Incident Reports (TRIs) were consistent with the aforementioned officer testimony.

The officers' body-worn camera footage did not capture the forcible takedown or any other force used against § 87(2)(b)

The EVENT (BR 16) revealed that a male caller, listed as § 87(2)(b) reported a black male with a beard wearing a gray jacket, tan pants, black knit cap, and light gray backpack breaking into a burgundy Chevy in front of § 87(2)(b) in Manhattan.

A screenshot from Sgt. Alahi's body-worn camera video footage depicts § 87(2)(b) as a black male with a black beard, wearing a dark colored jacket, dark colored knit hat, tan pants, and dark backpack (BR 09).

Officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. NYPD Patrol Guide Procedure 221-01 (BR 10).

§ 87(2)(g)  
[REDACTED]

**Allegation (E) Force: Outside of the 25<sup>th</sup> Precinct stationhouse in Manhattan, Police Officer Edwin Lau used physical force against § 87(2)(b)**

**Allegation (F) Force: Outside of the 25<sup>th</sup> Precinct stationhouse in Manhattan, Police Officer Maxwell Bindman used physical force against § 87(2)(b)**

§ 87(2)(b) (BR 04) testified that he arrived at the stationhouse at approximately 5 a.m. after being discharged from § 87(2)(b). Upon arriving, PO Lau grabbed § 87(2)(b) by his right leg and pulled him out of the police vehicle causing him to land on the ground on his stomach. § 87(2)(b) was not refusing to exit the vehicle. PO Bindman then picked § 87(2)(b) up by his right arm while PO Lau picked § 87(2)(b) up by the chain of his leg shackles, causing his knees to bend. The officers carried § 87(2)(b) into the stationhouse in this position.

PO Lau (BR 05) and PO Bindman (BR 06) provided consistent testimony that § 87(2)(b) refused to get out of the police vehicle upon arrival at the stationhouse. The officers asked § 87(2)(b) to get out of the vehicle at least three times. As § 87(2)(b) refused to get out of the car, PO Lau and PO Bindman grabbed § 87(2)(b) arms and pulled him out of the vehicle. Once outside the vehicle, § 87(2)(b) refused to walk inside the stationhouse.

PO Lau added that when § 87(2)(b) was out of the car, § 87(2)(b) intentionally fell to the ground, as he did not want to stand on his feet, and landed on his behind. PO Lau and PO Bindman picked § 87(2)(b) up from underneath his armpit off his ground. § 87(2)(b) would start to walk, but then would stop. PO Lau and PO Bindman carried § 87(2)(b) underneath his

armpit when he refused to walk for approximately five feet. PO Lau denied carrying § 87(2)(b) by his leg shackles.

PO Bindman did not recall if § 87(2)(b) fell to the ground as a result of being pulled out of the car. Because § 87(2)(b) refused to walk into the stationhouse, PO Bindman picked up § 87(2)(b) legs. PO Bindman then wrapped both of his arms underneath § 87(2)(b) legs and PO Lau picked § 87(2)(b) up from underneath § 87(2)(b) armpits. PO Bindman and PO Lau carried § 87(2)(b) into the stationhouse for approximately ten seconds.

§ 87(2)(g)

**Allegation (G) Force: Inside of the 25<sup>th</sup> Precinct stationhouse in Manhattan, Police Officer Edwin Lau used physical force against § 87(2)(b)**

**Allegation (H) Force: Inside of the 25<sup>th</sup> Precinct stationhouse in Manhattan, Police Officer Maxwell Bindman used physical force against § 87(2)(b)**

**Allegation (I) Force: Inside of the 25<sup>th</sup> Precinct stationhouse in Manhattan, Police Officer Maxwell Bindman used physical force against § 87(2)(b)**

It is undisputed that PO Lau and PO Bindman dragged § 87(2)(b) into the holding cell area at the 25<sup>th</sup> Precinct stationhouse. It is further undisputed that PO Bindman pushed § 87(2)(b) into Cell 10, moved him to Cell 9, and pushed him again into Cell 9 while § 87(2)(b) was rear handcuffed and leg shackled.

§ 87(2)(b) did not allege that PO Lau and PO Bindman dragged him into the cell area or used any force against him when placing him in the cell.

Video footage from the 25<sup>th</sup> Precinct stationhouse was obtained and can be viewed in its entirety in IA 48 (<<5:50:48 a.m. – 5:53:25 a.m.>>) (BR 11-12).

The sub clip of “1<sup>st</sup> FL Overflow Cell Entrance 1” view (BR 13) captures a hallway leading to the cell area door. At the 00:03 mark, PO Bindman holds the chain between § 87(2)(b) leg shackles, lifting § 87(2)(b) legs, and walks backward into the cell area. § 87(2)(b) behind is dragging on the floor. PO Lau is standing near the left side of § 87(2)(b) upper body. PO Lau holds § 87(2)(b) left arm and walks forward. PO Henenlotter and PO Gomez follow behind PO Lau, but they do not make any contact with § 87(2)(b).

The “1<sup>st</sup> FL Side A2 Cells 4” view (BR 14) captures Cell 9 on the right side of the frame and Cell 10 on the left side of the frame. At the beginning of the video, PO Bindman and PO Lau enter the frame from the right side, still dragging § 87(2)(b). PO Bindman, PO Lau, PO Gomez, and PO Henenlotter struggle to get § 87(2)(b) who is no longer visible in the frame, off the floor, but the camera does not capture exactly what is occurring on the floor. PO Bindman, PO Lau, and PO Gomez pick § 87(2)(b) up so that § 87(2)(b) is standing. PO Bindman is on the left side of § 87(2)(b). PO Lau is behind § 87(2)(b) and PO Gomez is on the right side of § 87(2)(b). PO Lau and PO Gomez let go of § 87(2)(b) and PO Bindman, who is holding on to the back of § 87(2)(b) blue shirt with his right hand, walks § 87(2)(b) into Cell 10 toward the bench. PO Bindman then pushes § 87(2)(b) with both his hands, causing § 87(2)(b) right side to make contact with the corner of the left and back walls of the cell. § 87(2)(b) lands on his behind on the bench, facing the urinal, with his legs on the ground. PO Bindman then grabs the chain of § 87(2)(b) leg shackles and pulls § 87(2)(b) leg shackles so that § 87(2)(b) legs are on the bench. PO Bindman then walks out of Cell 10 smiling. PO

Lau shuts the cell door and the officers leave the cell area with § 87(2)(b) lodged in handcuffs and leg shackles (<<00:00 – 00:31>>).

At the 01:52 mark, PO Bindman, PO Gomez, and PO Henenlotter return to the cell area. PO Gomez unlocks Cell 10. PO Bindman and PO Henenlotter enter Cell 10 and take § 87(2)(b) off the bench and walk him out of the cell. § 87(2)(b) is hunched over and walking slowly. PO Henenlotter lets go of § 87(2)(b) and PO Bindman grabs § 87(2)(b) by the back of the shirt. PO Gomez then holds underneath § 87(2)(b) right arm. Once § 87(2)(b) is inside Cell 9, PO Bindman pushes § 87(2)(b) with his right hand toward the back wall of the cell. It is unclear if § 87(2)(b) makes contact with the back wall. § 87(2)(b) lands on the bench on his right side area and lays on his side with his legs on the bench. PO Gomez then closes the cell door and the officers exit (<<01:52 – 02:36>>).

PO Lau (BR 05) testified that he did not remember lodging § 87(2)(b) into a cell. PO Lau then reviewed the aforementioned video footage and testified that § 87(2)(b) was dragged into the cell area because he refused to walk. PO Lau then stated that he “was carrying § 87(2)(b) in.” When the investigation pointed out that § 87(2)(b) bottom was on the floor, PO Lau said, “I thought I was carrying him. I didn’t know his bottom was on the ground.” PO Lau further testified that § 87(2)(b) refused to get up in front of the cell area and multiple officers were needed to get him off the ground. PO Lau did not know why PO Bindman pushed § 87(2)(b) once he was inside the cells and PO Lau did not see officers move § 87(2)(b) from Cell 10 to Cell 9.

PO Bindman (BR 06) testified that when § 87(2)(b) was in front of the desk area, he “dropped his body weight” to the ground. When PO Bindman told § 87(2)(b) to stand up, § 87(2)(b) did not cooperate. PO Bindman and PO Lau then carried § 87(2)(b) into the cell area the same way in which they carried him to the stationhouse. § 87(2)(b) moved his body. PO Bindman “may have” pulled § 87(2)(b) by the leg shackles to keep § 87(2)(b) “under control and carry § 87(2)(b) to the cell.” PO Bindman denied dragging § 87(2)(b) into the cell area by § 87(2)(b) leg shackles or using any force against him at the stationhouse.

Upon reviewing the stationhouse video footage, PO Bindman maintained that he was carrying § 87(2)(b) into the cell area, even when the investigation pointed out that § 87(2)(b) bottom was dragging on the ground. PO Bindman confirmed that he pushed § 87(2)(b) once § 87(2)(b) is inside the Cell 10. PO Bindman did so because it was “hard to get § 87(2)(b) into the cell because he was moving around.” PO Bindman did not push § 87(2)(b) for any other reason. PO Bindman grabbed § 87(2)(b) leg shackles and pulled them toward the bench because he was “placing § 87(2)(b) on the bench.” PO Bindman could not provide a reason he wanted § 87(2)(b) entire body on the bench. PO Bindman did not know why § 87(2)(b) was moved from Cell 10 to Cell 9, but said it was possible a sergeant gave him the instruction. PO Bindman “possibly” pushed § 87(2)(b) into Cell 9 because § 87(2)(b) “did not want to voluntarily walk into the cell.” PO Bindman did not push § 87(2)(b) for any other reason.

PO Henenlotter (BR 07) testified that § 87(2)(b) was lodged still in handcuffs and leg shackles because he refused to remove his shoe strings, belt, and any other strings on his person. After reviewing the stationhouse video footage, PO Henenlotter stated he did not know why § 87(2)(b) was moved from Cell 10 to Cell 9.

Sergeant Norman Cox (BR 15), of the 25<sup>th</sup> Precinct, who was the desk officer at the time § 87(2)(b) was brought back to the stationhouse, testified that the holding cells are not visible from the desk, but there are live-feed cameras which cover the cell area. Sgt. Cox did not





- PO Maxwell Bindman has been a member of service for three years and has been named a subject in three CCRB complaints and five allegations, none of which was substantiated. § 87(2)(g) [REDACTED]
- PO Fausto Gomez has been a member of service for 12 years and has been named a subject in six CCRB complaints and 11 allegations, none of which was substantiated. § 87(2)(g) [REDACTED]
- PO Norman Brissett has been a member of service for three years and has been named a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g) [REDACTED]

### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- As of February 14, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (BR 01).
- § 87(2)(b) [REDACTED]

Squad No.: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date